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10/674,904

09/30/2003

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EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3622

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/674,904

Applicant(s)

KOST ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,16-25,31,33-45 and 51-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 16-25, 31, 33-45 and 51-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 2, 4-10, 16-25, 31, 33-45 and 51-55 have been examined. Application 10/674,904 has a filing date 09/30/2003 and Claims Priority from Provisional Application 60/472,956 (05/22/2003).

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

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Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present application, claims 6 and 21 do not recite a "concrete result". The term "conforming to the look and feel of Web portal" is a term that is not concrete as it is not clear the meaning of said term.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims recites "web page of the drug sample Website conforming to the look and feel of the Web portal identified by a partner identifier and conforming to the look and feel of another Web portal identified by another partner identifier". It is not clear the meaning of "look and feel". For purpose of art rejection, said limitation would be interpreted as meaning that upon clicking an ad in a partner website, the viewer of said ad would have the impression that he or she is viewing the page of said partner website instead of an advertiser's website.

Response to Amendment

4. In response to Non Final Rejection filed 10/19/2006, the Applicant filed an Amendment on 04/19/2007, which amended claims 1, 5, 6, 16, 31 and cancel claims 3 and 32.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 16-20 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926), RxCentric and MedManage (Dialog: File 610: 00483951) and Sample of the Future (Dialog file 9: 02536449).

As per claim 1, MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) article teaches:

A computer-implemented system for promoting pharmaceutical drugs, comprising:

a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause one prescriber's drug sample availability and characteristics to be different from those of another prescriber (see paragraph 5); and

a computer-implemented drug sample fulfillment platform that is Web-based for implementing the set of brand rules to allow a prescriber to obtain drug samples to

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dispense to a patient without the use of a sales representative (see paragraphs 1-2) *the computer-implementable drug sample fulfillment platform electronically notifying the prescriber about the availability of drug samples* (see paragraph 5 "option to request information on samples that are not their formulary").

As per claim 2, Sample of the Future (Dialog file 9: 02536449) teaches:

The system of Claim 1, wherein drug samples include physical samples (see paragraph 15).

As per claim 4 MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) article teaches:

The system of Claim 1, wherein drug samples include a coupon printed in the office of the prescriber, which is networked to the drug sample fulfillment platform (see paragraph 2).

As per claim 5, RxCentric and MedManage (Dialog: File 610: 00483951) article teaches:

The system of Claim 4, wherein the drug samples, which are in a printed form, are redeemable at a pharmacy, redeemed data being generated by the drug sample fulfillment platform for refining the brand rules so as to better guide distribution of the drug samples (see paragraph 8).

As per claim 16, RxCentric and MedManage (Dialog: File 610: 00483951) and MedManage Leads Shift in Drug Sampling (Dialog file 16: 08993926) teach

A drug sample fulfillment platform, comprising:

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a drug sample Web site for mating with a portal that is selected from a group consisting of prescriber-oriented Web portals, an e-Detailing service, a Web site regarding a drug brand, and an online physician learning site (see RxCentric and MedManage paragraph 5-6); and

a request database for receiving requests of a prescriber through the drug sample Web site for drug samples, the request database responding to the prescriber by allowing the prescriber to print coupons or to print an order form for physical samples or pads of pre-printed vouchers if a set of brand rules allow the prescriber to receive drug samples in the form of print coupons, order forms for physical samples, or pads or pre-printed vouchers (see RxCentric and MedManage paragraphs 1-6), the drug sample fulfillment platform *electronically* notifying the prescriber when the prescriber has not ordered drug samples for a certain amount of time (see MedManage Leads Shift paragraph 5).

As per claim 17, Samples of the future (Dialog file: 9:02536449) teaches:

The drug sample fulfillment platform of Claim 16, wherein the request database receives claim information when a patient redeems a print coupon or a preprinted voucher for physical samples (see paragraph 10).

As per claim 18, Samples of the future (Dialog file: 9:02536449) teaches: The drug sample fulfillment platform of Claim 17, wherein the request database produces a first report accounting for the number of coupons or vouchers redeemed by patients of the prescriber (see paragraph 10).

As per claim 19, Samples of the future (Dialog file: 9:02536449) teaches:

The drug sample fulfillment platform of Claim 18, wherein the request database produces a second report correlating an allocation of drug samples of a drug to the prescriber with the number of prescriptions written by the prescriber relating to the drug (see paragraph 10).

As per claim 20, RxCentric and MedManage (Dialog: File 610: 00483951) teaches:

The drug sample fulfillment platform of Claim 19, wherein the request database produces a third report accounting for the monetary amount spent by a pharmaceutical company on a drug sample fulfillment program for a drug and a monetary amount associated with prescriptions written by the prescriber for the drug (see RxCentric paragraph 8 "track sales effort").

As per claim 51, MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) article teaches:

The system of Claim 1, wherein said fulfillment platform comprising:

a pharma rules sample engines for performing personalization and intelligent brand rule implementation (see paragraph 5);

a marketing sample engine for integrating with drug samples suppliers and Web portals for prescribers (see paragraphs 1-6) and

the pharma rules sample engine and the marketing sample engine being based on the set of brand rules and on a set of prescriber preferences (see paragraph 5).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10, 21-25, 31, 33-43, 45 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over iPhysicianNet and MedManage System Partners to Offer a New Electronic Voucher Sampling Service to Thousands of US Physicians (Dialog file 20: 16322132), For consumer free samples (Dialog file 9: 02648296), Sample of the Future (Dialog file 9: 02536449), RxCentric and MedManage (Dialog: File 610: 00483951), MedManage Tracks Troublesome Pills (Dialog file 635:2075728), MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) in view of Ross (US 6,629,135).

As per claim 6, iPhysicianNet and MedManage System Partners to Offer a New Electronic Voucher Sampling Service to Thousands of US Physicians (Dialog file 20: 16322132) teaches:

A system for distributing pharmaceutical drugs, comprising:

a drug sample fulfillment platform *that comprises a drug sample Web site for mating with a Web portal when a consumer selects a hyperlink* for accessing drug sample services (see paragraph 4); and

a first set of Web pages coupled to the drug sample fulfillment platform through which a consumer can access the drug sample fulfillment platform to order drug

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samples (see paragraph 4) but fails to teach if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform *the first set of Web pages of the drug sample website conforming to the look and feel of the Web portal identified by a partner identifier and conforming to the look and feel of another Web portal identified by another partner identifier*. However, Ross teaches an affiliate system where the look and feel of the website of a partner or affiliate portal is captured, stored and display when a viewer clicks on said affiliate ads (see Ross col 3, lines 5-20). Therefore, it would have been obvious to a person of ordinary skill in the art that prescribers that are hyperlinked to a sample ordering online system from an affiliate partner website would display the same look and feel of the affiliate website, as taught by Ross in order to give said prescribers the impression that they are viewing pages served by the affiliate website and not by a third party.

As per claim 7 iPhysicianNet and MedManage System Partners to Offer a New Electronic Voucher Sampling Service to Thousands of US Physicians (Dialog file 20: 16322132) teaches:

The system of Claim 6, further comprising a second set of Web pages coupled to the drug sample fulfillment platform through which a sales representative can access the drug sample fulfillment platform (see paragraph 5). It is inherent that drug sales representative access the MedManage system for an e-detail session.

As per claim 8, For consumer free samples (Dialog file 9: 02648296) teaches:

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The system of Claim 6, further comprising a third set of Web pages coupled to the drug sample fulfillment platform through which a patient can access the drug sample fulfillment platform to obtain sample vouchers (see paragraph 4).

As per claim 9 Sample of the Future (Dialog file 9: 02536449) teaches:

The system of Claim 6, wherein the first set of Web pages display a list of drug samples available to the prescriber to order drug samples in a form selected from a group consisting of pre-printed vouchers and print on-demand coupons (see paragraph 15).

As per claim 10, RxCentric and MedManage (Dialog: File 610: 00483951) teaches:

The system of Claim 6, wherein the first set of Web pages display a list of the order history of the prescriber, the list including a date and a drug sample ordered by the prescriber (see paragraph 8). It is inherent that for the MedManage system to track sales efforts and collects sampling prescription data, the MedManage system has to display a list of an order history for said tracking.

As per claim 21, MedManage tracks troublesome pill samples (Dialog file 635:2075728) article teaches:

A networked system for ordering pharmaceutical sample drugs, comprising:

a drug sample fulfillment platform that comprises a drug sample Web site for mating with a Web portal when a prescriber selects a hyperlink (see paragraphs 1-6)

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the drug sample Web site presenting a Web page including selectable options for the prescriber to order drug samples (see MedManage tracks troublesome pill samples paragraph 15)

the time frame in which those drug samples are valid for the prescriber being specified by a set of brand rules (see MedManage tracks troublesome pill samples paragraphs 11-15). MedManage determines the different classes of medicines that are valid for a prescriber and it is inherent that there is a time frame for ordering drug samples, as drug samples have expiration date.

MedManage tracks troublesome pill samples (Dialog file 635:2075728) fails to teach the web page of the drug sample Website conforming to the look and feel of the Web portal identified by a partner identifier and conforming to the look and feel of another Web portal identified by another partner identifier. However, Ross teaches an affiliate system where the look and feel of the website of a partner or affiliate portal is captured, stored and display when a viewer clicks on said affiliate ads (see col 3, lines 5-20). Therefore, it would have been obvious to a person of ordinary skill in the art that prescribers that are hyperlinked to a sample ordering online system from an affiliate partner website would display the same look and feel of the affiliate website, as taught by Ross in order to give said prescribers the impression that they are viewing pages served by the affiliate website and not by a third party.

As per claim 22 Sample of the Future (Dialog file 9: 02536449) teaches:

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The networked system of Claim 21, wherein the drug samples are in a form selected from a group consisting of pre-printed vouchers and physical samples (see paragraph 15).

As per claim 23, MedManage tracks troublesome pill samples (Dialog file 635: 2075728) teaches:

The networked system of Claim 21, wherein the selectable options of the Web page include a quantity for each drug sample, which is specifiable by the prescriber (see paragraph 15). It is inherent that for a prescribers to order drug samples online, said prescribers has to indicate the quantity of said order sample.

As per claim 24, Sample of the Future (Dialog file 9: 02536449)

The networked system of Claim 21, the selectable options of the Web page include a delivery location to which the drug samples will be shipped (see paragraph 15). It is inherent that in order for a physician to order physical samples, said physician would need to supply his or her physical address.

As per claim 25 MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) article teaches:

The networked system of Claim 21, wherein the selectable options of the Web page include an option for printing on-demand vouchers on a printer in the office of the prescriber (see paragraph 2).

As per claim 31, iPhysicianNet and MedManage (Dialog file 20:16322132) and MedManage Leads Shift in Drug Sampling (Dialog file 16: 08993926) teaches:

A method for accessing a drug sample fulfillment platform, comprising:

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activating a link to access the drug sample fulfillment platform from a Web portal (see iPhysicianNet and MedManage paragraphs 3-4);

creating a transaction that includes a prescriber identifier (see MedManage Leads Shift in Drug Sampling paragraphs 2-5).

mating the drug sample Web site to the Web portal allowing a prescriber to navigate and order drug samples only for drugs specified by a set of brand rules which include physical samples, pre-printed vouchers and print coupons (see MedManage Leads Shift in Drug Sampling paragraph 5 "formulary"); and

iPhysicianNet and MedManage (Dialog file 20:16322132) and MedManage Leads Shift in Drug Sampling (Dialog file 16: 08993926) fail to teach shutting down redemptions through a pharmacy network by the drug sample fulfillment platform and disabling orders from drug samples in sample program that has expired. However, Official Notice is taken that it is old and well known in the promotion art that online orders placed in a website for unavailable items are disable by said website. It would have been obvious to person of ordinary skill in the art at the time the application was made, to know that online orders placed by prescribers for drug samples in a website would be disable by said website in view that it is old and well known to disable online orders for unavailable items.

iPhysicianNet and MedManage (Dialog file 20:16322132) and MedManage Leads Shift in Drug Sampling (Dialog file 16: 08993926) fail to teach *formatting a set of Web pages of a drug sample Web site to emulate the look and feel of the Web portal identified by the partner identifier and conforming to the look and feel of another Web*

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portal identified by another partner identifier. However, Ross teaches an affiliate system where the look and feel of the website of a partner or affiliate portal is captured, stored and display when a viewer clicks on said affiliate ads (see col 3, lines 5-20). Therefore, it would have been obvious to a person of ordinary skill in the art that prescribers that are hyperlinked to a sample ordering online system from an affiliate partner website would display the same look and feel of the affiliate website, as taught by Ross in order to give said prescribers the impression that they are viewing pages served by the affiliate website and not by a third party.

As per claim 33 MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) article teaches:

The method of Claim 31, causing the prescriber to register if the prescriber identifier is not found in a request database (see paragraph 5).

As per claim 34, MedManage tracks troublesome pill samples teach:

The method of Claim 31, based on a segment to which the prescriber belongs, determining one or more of the following:

what drug samples that are available to the prescriber; a drug sample quantity limit that is available to the prescriber; a drug sample time limit in which the drug sample quantity limit is available; and the type of sample that is available to the prescriber (see paragraph 15). It is inherent that drug sample orders have time limits in view that drug samples have expiration dates.

As per claim 35, MedManage tracks troublesome pill samples teaches:

The method of Claim 34, receiving a selection for physical samples, the act of receiving including receiving a drug selection, a type of drug sample selection, a quantity of drug sample selection, and a delivery address (see paragraph 15).

As per claim 36, MedManage tracks troublesome pill samples teaches:

The method of Claim 35, receiving a print request to print an order form capturing the drug selection, the type of drug sample selection, the quantity of drug sample selection, and the delivery address (see paragraph 15).

As per claim 37, RxCentric and MedManage (Dialog: File 610: 00483951) article teaches:

The method of Claim 36, recording the requesting activities of the prescriber in a request database (see paragraph 8).

As per claim 38, For consumers free samples (Dialog file 9: 02648296) teaches:

The method of Claim 34, receiving a selection for pre-printed vouchers or print coupons, the act of receiving including receiving a drug selection, and a quantity of coupons to be printed (see paragraph 5).

As per claim 39, For consumers free samples (Dialog file 9: 02648296) teaches:

The method of Claim 38, receiving a ship request to ship the pre-printed vouchers or a print request to print coupons capturing the drug selection (see paragraph 5).

As per claim 40, RxCentric (Dialog file 610: 00483951) teaches:

The method of Claim 39, recording the requesting activities of the prescriber in a request database (see paragraph 8).

As per claim 41, Samples of the future teaches:

The method of Claim 40, teach receiving a request to print a first report that lists registration data of the prescriber, the requesting activities of the prescriber, and the claim data from a claim processor that is indicative of redeemed pre-printed vouchers and print coupons at pharmacies (see paragraph 10).

As per claim 42, MedManage tracks troublesome pill samples teaches:

The method of Claim 40, receiving a request to print a second report that correlates drug samples of a drug distributed to the prescriber and with prescriptions written by the prescriber relating to the drug (see paragraph 11).

As per claim 43, RxCentric and MedManage (Dialog: File 610: 00483951) teaches:

The method of Claim 40, receiving a request to print a third report that accounts for the return on investment for a monetary amount spent on a drug sample distribution program for a drug and the monetary amount received from prescriptions for the drug (see paragraph 8 "tracks sale efforts").

As per claim 45, RxCentric and MedManage (Dialog: File 610: 00483951) article teaches:

The method of Claim 40, refining the drug sample quantity limit of the prescriber based on the number of redemptions of pre-printed vouchers and print coupons associated with the prescriber (see paragraph 8 "tracks sale efforts").

As per claim 53, RxCentric and MedManage (Dialog: File 610: 00483951) article teaches:

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The system according to claim 6, wherein said fulfillment platform implementing a set of brand rules under which pharmaceutical drug samples are distributed, wherein said brand rules include: product; allocation quantity; sample type selected from a group consisting of live samples, pre-printed samples and on-demand samples; and, drug strength (see paragraph 1-6). It is inherent that drug samples orders place online using the MedManage software have to include the products, quantities, type, drug strength, etc in order that the MedManage fulfill said order.

As per claim 54 MedManage Tracks Troublesome Pills (Dialog file 635:2075728) teaches:

The system according to claim 6, wherein said fulfillment platform implementing a set of brand rules for distributing pharmaceutical drug samples, said brand rules including timing considerations that are selected from a group consisting of sample offer time limits and rolling expiration dates for vouchers from either within or between brands for which a quantity of drug samples can be ordered (see MedManage tracks troublesome pill samples paragraphs 11-15). MedManage system determines the different classes of medicines that are valid for a prescriber and it is inherent that there is a time frame for the validity of ordering drug samples, as drug samples have expiration date.

As per claim 55, RxCentric and MedManage (Dialog: File 610: 00483951) article teaches:

The system according to Claim 6, wherein said fulfillment platform comprising a pharma rules sample engine for implementation brand rules under which a prescriber

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may obtain drug samples, the pharma rules sample engine modifying the brand rules so as to change a quantity limit of drug samples to be distributed to the prescriber (see paragraph 6 "physician customized information").

7. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926).

As per claim 52, MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926) does not expressly teach:

The system according of claim 51, wherein the marketing sample engine links the drug sample fulfillment platform to one or more suppliers and drug samples so as to inhibit the lack of supply of sample drugs desired by the prescriber or inhibit the inconsistent supply of drug samples desired by the prescriber. However, Official Notice is taken that it is old and well known in the prescribing art that drug samples are control by the manufacturers of said drugs. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that drug sample system would inhibit or control the delivery of drug samples as it is old and well known to do so.

8. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over RxCentric and MedManage (Dialog: File 610: 00483951) in view of Feeney (US 2002/0032582).

As per claim 44, article fails to teach:

The method of Claim 40, but fails to teach detecting fraud by comparing the drug sample quantity limit and the time frame in which the drug sample quantity limit is available to the prescriber and the claim data which is indicative of the number of pre-printed vouchers and print coupons redeemed by patients. However, Feeney teaches a system that detects fraud with sample medication prescription (see Feeney paragraph 284-285). Therefore, online sample voucher systems would have been motivated to add the feature of detecting fraud in coupon or voucher redemption, as taught by Feeney in view that coupon or voucher's fraud cost companies a lot of money without said companies receiving a return in the investment of said coupons.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 2, 4-10, 16-25, 31, 33-45 and 51-55 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant argues in Exhibit A that the prior art use by the Examiner disclose goods or services connected with the registered trademark EMEDSAMPLE and MEDSAMPLE and that this trademarks has been used to label different goods or services over the years and that the office is incorrect in assuming that the goods or services covered by the claimed invention of 10/674,904 are identical to the goods or services labeled by the trademark EMESAMPLE and MEDSAMPLE occurring during a period that is more than one year prior to the date of the application for patent.

The Examiner answers that the Applicant needs to point out to the Examiner what are the difference between the prior arts and the Applicant's claimed invention and

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not simply mentioned that the trademark EMESAMPLE and MEDSAMPLE are not identical to the Applicant's claimed invention.

The Applicant argues that if the use or sale was experimental, there is no bar under 35 USC 102(b). The Examiner answers that the above prior arts mentioned by the Examiner teach that the Applicant was already allowing physicians to register online and order drug samples online more than one year prior to Applicant's filing date. Furthermore, the Applicant is not providing any evidence that it was experimental and the prior arts, such as MedManage Leads Shift in Drug Sampling Practices Online Vouchers (Dialog: File 16: 08993926), do not mention that the Applicant's claimed invention was in a experimental stage. Therefore, contrary to Applicant's argument, Applicant's product was already public and on sale more than one year prior to Applicant's filing date (May 22, 2003).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra

May 21, 2007



JEFFREY D. CARLSON
PRIMARY EXAMINER